

TITLE 31
LICENSING OF TEMPORARY BUSINESSES

CHAPTERS:

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CHAPTER 31.01
GENERAL PROVISIONS

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31.01.01: SCOPE AND PURPOSE

The purpose of Title 31 is to regulate the licensing of people who do not have a permanent business within the City of Sturgis who wish to do business within the City of Sturgis for a temporary period of time.

31.01.02: DEFINITIONS

A) VENDOR: For the purpose of this Section, a vendor is any person, firm, corporation, partnership or association not having an operating place of business for at least 5 months throughout the year within the City who, in conjunction with an event of more than four (4) consecutive days within any twelve (12) day time span, engages in temporary or transient business in the City selling or displaying goods, wares, merchandise or services, or a permanent business person, firm or corporation which is located within the City limits who, for more than four (4) consecutive days within any twelve (12) day time span, is selling or displaying such goods, wares, merchandise or services, away from his/her or its usual operating place of business and who, for the purpose of carrying on such business, hires, leases, or occupies any room, building, structure, or space for the exhibition or sale of such goods, wares, merchandise, or services. The person, firm or corporation so engaged shall not be relieved from the provisions of this Section by reason of association with any local dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant or auctioneer. (Title 31.01.02 (A) replaced effective 03/05/2013, Ordinance 2013-04)

B) VENDING AREA: This is defined as the area in which all of the related and supportive activities for the operation of a business granted a temporary business license under this Title can be found. The area shall include the area for keeping all materials, equipment, inventory, components and other items related to the temporary business. This definition shall also include any area used by the business to assemble, display, market, demonstrate or provide a tryout of any of

the goods or services displayed, offered for sale or otherwise made available to consumers the licensed temporary business. The definition shall also include the area for meeting with potential or actual clients, buyers, or customers, and shall also include the space needed to prepare the goods or services for transfer to the client, buyer or customer, as well as all of the area used in any manner for preparing, cooking, serving or consuming any food or other consumable product offered for sale to purchasers or given away at no charge to Rally attendees.

The common area shared by written agreement between three or more food vendors for their customers to be seated at tables and eat the food products they have purchased from those vendors shall not be included as Vending Area.
(31.01.02 (B) Vending Area added by Ordinance 2013-23, effective 12-18-2013)

- C) YEAR: A twelve (12) month period.
- D) BUSINESS: The activity of buying & selling.
- E) OPERATION: In action, functioning.
- F) EVENT: An organized occurrence or happening where the City provides extraordinary services, including but not limited to sanitation services, law enforcement or traffic control.

31.01.03: PENALTY

A violation of this ordinance shall be punishable by a civil penalty of 80% of the combined cost of a Temporary Vendor License and the Special Sanitation Fee, plus a separate administrative fee of \$75.00, to be paid before the Temporary Vendor License can be issued. To avoid additional civil penalty fees for each separate day of operation violation of this ordinance, the vender shall be required to obtain a valid Temporary Vendors License from the City Finance Office within 12 hours of the issuance of the Citation. No right to appeal this penalty to the City Council shall exist until the full payment of the penalty assessed against the Temporary Vendor has been paid to the City and verified by the Finance Office. Any Temporary Vendor exercising the right to appeal this penalty provision may appear in person at the time of the public hearing before the Council, or may be represented by a licensed attorney. In addition to statements by the Temporary Vendor during such public hearing, the Council shall consider and determine the credibility of any written material submitted to the Council in regard to the appeal prior to the close of the public hearing.

Any temporary vendor found to be operating without a Temporary Vendor License and Special Sanitation Fee twice within a 24 month period shall be prohibited from obtaining a Temporary Vendor License in the future unless the Temporary Vendor License application is accompanied by combined payment of the administrative penalty and administrative fee set forth in the preceding paragraph, for each separate violation of this ordinance.

Any person or entity who is required to obtain a Temporary Vendor License and Special Sanitation Fee and who knowingly allows an unlicensed vendor to conduct or engage in

business on property they own or which is subject to their control shall be prohibited from obtaining a Temporary Vendor License for a period of 400 days after the date of violation.

In addition to the civil penalty and administrative fee set forth above, a violation of this Title is a Class 2 Misdemeanor, punishable by the maximum punishment set forth by the laws of the State of South Dakota pursuant to SDCL 22-6-2.

In addition, any violation of the provisions of this Title may result in the revocation and/or suspension of any license issued pursuant to any Section of this Title.

(31.01.03 revised by Ordinance 2013-23, effective 12-18-2013)

CHAPTER 31.02
LICENSING AND REGULATION OF PEDDLERS, VENDORS, SOLICITORS,
PROFESSIONAL PEOPLE, BUSINESSES AND TRADES

SECTIONS:

- 31.02.01: Sales and Marketing within the Right of Way
- 31.02.02: Peddling in Parks
- 31.02.03: Licensing of Transient Professional People and Merchants
 - 31.02.03.01 Vendor License Required
 - 31.02.03.02 Application
 - 31.02.03.03 Property Vending Map
 - 31.02.03.04 Fee and Duration of License
 - 31.02.03.05 Issuance
 - 31.02.03.06 Exemptions from the Temporary Vendor License Fee
 - 31.02.03.07 Refund Fee for Transient Merchant License
 - 31.02.03.08 Required Documentation of Sales Activities

31.02.01: SALES AND MARKETING WITHIN THE RIGHT OF WAY

No person may display, market, offer in exchange for donation or sale, or sell any goods, services or merchandise in person or from a cart, wagon, automobile, truck or other vehicle in the streets, thoroughfares, or while within any other public Right of Way, of the City. This Section does not apply to the delivery of farm or garden products, where the order for same has been placed in advance, nor does it apply to drayage or the delivery of goods sold in the regular course of an established business. Nothing in this paragraph shall prohibit the City from entering into a contract for the sale of ice cream and sundries for immediate conditions agreed to by the Common Council, or prohibit the City Council from adopting a resolution to allow the display or sale of lottery tickets or other goods or services in the Public Right of Way for the direct benefit of a non-profit organization or group, as defined in Title 25.02.02 of Sturgis City Ordinances. Any qualifying organization or group as defined in Title 25.02.02 must submit an application, consistent with the requirements of Title 25.02.11, to the Finance Office at least 90 days prior to the proposed starting date for such display or sale. The City Council may adopt such an authorizing resolution for a non-profit organization only for qualified display or sale activities which occur during an Event lasting more than four (4) days within a twelve (12) day time period.

For an event to be located within the Downtown Business Improvement District, the City Council may authorize such use of public Right of Way located within the Downtown Business Improvement District by a vote of the majority of the Council. For an event lasting not more than four days located outside the Downtown Business Improvement District, the City Council may authorize such use of designated public Right of Way, after notice and public hearing, by the adoption of a Resolution by a majority of the City Council approving such use.

31.02.02: PEDDLING IN PARKS

It shall be unlawful for any peddler or other person excepting a person occupying a portion of the park under a valid concession agreement to sell or offer to sell, to any person within any municipal park of the City, any goods, wares, merchandise, books, pictures, novelties, souvenirs or trinkets or any other article of commerce and trade, including goods of his own production or manufacture. This provision shall not include sales by the City or any organization having an approved lease agreement with the City.

(31.02.01 and 31.02.02 revised with Ordinance 2013-10, effective 7-18-2013)

31.02.03: LICENSING OF TRANSIENT PROFESSIONAL PEOPLE AND MERCHANTS**31.02.03.01 Vendor License Required**

Any firm, person, or corporation which intends to operate a temporary business within the corporate limits of the City of Sturgis in conjunction with an event of more than four (4) consecutive days within any twelve (12) day time span shall be required to purchase a vendor license for each structure, stand, tent, vehicle, booth, location or place which is used by such merchant for the sale or distribution of goods. The person so engaged shall not be relieved from the provisions of this Section by reason of association with any local operating business, dealer, trader, merchant or auctioneer, or by conducting such temporary or transient business in connection with or as a part of or in the name of any local dealer, trader, merchant, auctioneer or business.

The vendor license must be posted in each individual vendor location during operation.

31.02.03.02 Application

To obtain a license, a vendor shall file, in the office of the City Finance Officer, a verified application stating his or her name, and residence, description and identification of the place in which he or she proposes to do business, dates of operation, name, address, phone number and e-mail address of property owner where business will take place and, the description of the goods he or she intends to handle. Applicant's South Dakota State sales tax number shall be included as part of the application, and any application submitted without a valid Sales Tax license number will not be processed for issuance of a temporary vendor license. A South Dakota State Department of Health license, when required for applicant's business, shall also be presented at the time of application.

31.02.03.03 Property Vending Map

Starting January 1, 2014 any property owners seeking to place temporary vendors licensed under this Title on property zoned GC-1, HS-1, RV (14 day only), Public Land or Fairgrounds, shall file at the City Finance Office a 8 1/2 x 11 scale map of the potential vending area based on the parcel ID number for the subject property as established by the Meade County Equalization Office, and having attached to it a second

sheet consisting of a diagram showing the dimensions of the potential vending area to be licensed.

- a) For all property owner maps filed at the City Finance Office prior to April 1 of each year, there shall be no filing fee.
- b) For all property owner maps filed at the City Finance Office between April 1 and May 31st of each year, the filing fee shall be \$250.00.
- c) For all property owner maps filed at the City Finance Office between June 1 and July 15 of each year, the filing fee shall be \$500.00.
- d) For all property owner maps filed at the City Finance Office after July 16 of each year, the filing fee shall be \$1000.00.

Each applicant for a temporary vendor license shall submit a file-stamped copy of a scale map for the property parcel upon which the applicant proposes to operate if licensed. The applicant shall include with the application material written confirmation that the property owner, a designated representative of the owner as on file with the City Finance Office, knows the applicant is seeking a temporary vendor license to operate on a parcel owned by the property owner. The file stamped map copy submitted by the applicant show the dimensions and location of the area applicant seeks to have licensed for temporary vending.

31.02.03.04 Fee and Duration of License

- A) A temporary business shall pay a Temporary Vendor License fee based on location and size of the overall vending area as set forth below together with the Special Sanitation Fee at the rate established and required by Title 11 of Sturgis City Ordinances for each twelve (12) consecutive day period, or portion thereof, in any calendar year. The combined fee shall be paid at the Finance Office at the time the application is submitted for approval. The Finance Officer shall note on the license the time period for which it is effective. A business may purchase only two (2) vendor licenses per location per twelve (12) month period.
- B) The license fee for each vending area, for payment of both the Temporary Vendor License fee and the Special Sanitation fee, shall be as follows:
 1. Vending area of 100 square feet or less, \$560.00
 2. Vending area of 101 to 400 square feet, \$850.00
 3. Vending area of 401 to 800 square feet, \$1000.00
 4. Vending area of 801 to 1200 square feet or less, \$1200.00
 5. Vending area of more than 1200 square feet, \$1500.00

Each vending area separated by a distance of three (3) feet or more from another vending area shall be subject to a separate license fee. Regardless of any shared resources, expenses or any corporate affiliation or other cooperative business activities, each temporary business shall be required to obtain a separate temporary business license.

31.02.03.05 Issuance

On filing the application and payment of the fee described in this section, the Finance Officer shall issue a license to the applicant to do business at a place described in the application and for the time for which the license fee has been paid in advance. Any applicant that has had their license issued who subsequently changes location and submits an amended application to show that change shall be charged a supplemental administrative fee of \$100.00 to obtain an amended license. Any vendor that changes location without obtaining an amended license as provided herein shall be subject to the penalty provisions set forth at section 31.01.03 of this Ordinance. This supplemental administrative fee shall also apply to organizations which are exempt from the Temporary Vendor License fee but are subject to the Special Sanitation fee imposed by ordinance 11.03.21.

31.02.03.06 Exemptions from the Temporary Vendor License Fee:

The exemptions to the requirement to purchase a temporary business license are stated in paragraphs A through E below. Regardless of any shared resources, expenses, corporate affiliation or relationship, other cooperative business activities, or any contract or agreement between temporary businesses, each temporary business shall be required to obtain a separate temporary business vendor license. Each vending area separated by a distance of three (3) feet or more from another vending area shall be required to obtain a separate license fee.

All Sale, display, marketing or similar activities that are not specifically described within the following definitions shall not qualify for an exemption from the Temporary Vendor License fee.

- A) Sales where the applicant has demonstrated by verifiable documentation that the proceeds are to be used exclusively for religious, charitable or benevolent purposes. Written proof of such religious, charitable, or benevolent non-profit status as declared by the IRS (i.e. 501(c) (3) documentation) and compliance with the notice provisions of SDCL 22-25-25(6) when required, must be presented when the application is submitted.
- B) Sales to wholesale or retail merchants, by sample, for future delivery made by representatives or established wholesalers or manufacturers.
- C) The sales of fruits, vegetables or farm or garden products in their natural state.
- D) Sales by youth age 15 years and under, selling lemonade and like items and incidentals thereto from property from which they reside, shall be exempt from the Temporary Vendor License and Special Sanitation fees.
- E) Parking lots on private property, when Vendor License application states that parking of vehicles is the only sales or marketing activity to be conducted on the

premises identified in the Vendor application, shall be exempt from the Temporary Vendor License and Special Sanitation fees.

31.02.03.07 Refund Fee for Transient Merchant License

The City of Sturgis is hereby authorized to refund up to 50% of a Temporary Vendor License fee, provided that written notice from the applicant requesting that the license be cancelled is received at the City Finance Office ten (10) days prior to the official start day of the event.

31.02.03.08 Required Documentation of Sales Activities

It is the responsibility of the Transient Merchant to maintain the necessary records to comply with the minimum state requirements of sales tax reporting as applied to a sales tax licensee. Evidence and documents to show proof of compliance with these requirements shall be provided by the licensee to any authorized representatives of the South Dakota Department of Revenue, or to any law enforcement officer, upon request. The records to be maintained are the following:

- a) Sales receipts in the form of cash register tape, written or printed credit card receipts, or hand written sales receipts that identify the item sold, the sale price, the tax charged and the time and date of the transaction.
- b) Inventory records, including a statement of beginning inventory of merchandise, for a minimum of three years preceding the date of inspection of the transaction record, consistent with the requirements of SDCL 10-45-85.
- c) A written list of suppliers, including names, addresses and phone numbers of the supplier, for all suppliers used by the licensee for the three years preceding the date of inspection of the supplier list, consistent with the requirements of SDCL 10-45-87.

A violation of this provision shall follow the penalties described in Section 31.01.03.

(Title 31 adopted effective Nov. 5, 2004 – Ordinance 2004-18 – Ordinance creating Title 31 – Licensing of Temporary Businesses and moving previous Chapter 3.01 – Licensing and regulation of Peddlers, vendors, solicitors, professional people, businesses and trades to Title 31, chapter 31.02)

(Title 31 replaced in entirety effective May 2, 2012, Ordinance 2012-07)

(Title 31.01.02 (A), 31.02.03.2 and 31.02.03.3 replaced effective 3/05/2013, Ordinance 2013-04)

(Title 31.02.03 replaced in entirety by Ordinance 2013-23, effective 12-18-2013)